

**STATE OF WEST VIRGINIA
LAND SALES AND CONDOMINIUM DIVISION
BEFORE THE LAND SALES AND CONDOMINIUM DIRECTOR
CHARLESTON, WEST VIRGINIA 25305**

IN THE MATTER OF:

**CASE NO.: 11-0098, 11-0085,
11-0062**

**UNIVERSAL MARKETING
SOLUTIONS and
JENNIFER KIRK**

**SUMMARY ORDER TO CEASE AND
DESIST, SUSPENDING EXEMPTIONS
AND NOTICE OF RIGHT TO
HEARING**

RESPONDENTS.

SUMMARY ORDER

WHEREAS, pursuant to the authority granted by the West Virginia Real Estate Time-Sharing Act, (hereinafter "the Act")(Article 9, Chapter 36 of the West Virginia Code, W. Va. Code 36-9 (2011)), the Division of Land Sales and Condominiums under the State Auditor (hereinafter "Division") has investigated the activities of the above named entities and individuals (hereinafter "Respondents").

WHEREAS, as a result of the Division's investigation, the Director of the Land Sales and Condominium Division, by the authority vested in him by Chapter 36, Article 9, Section 23 of the Act, finds as follows:

RESPONDENTS

1. "Universal Marketing Solutions" (hereinafter "Respondent UMS") is a registered, fictitious name of Hicks, Inc., which was incorporated in 2006 with the last known mailing address of 433 Plaza Real, Suite 275, Boca Raton, FL 33432.
2. Jennifer Kirk (hereinafter "Respondent Kirk") acted as Vice President and Registered Agent of Respondent UMS for the relevant time period.

FINDINGS OF FACT

3. Paragraphs 1 and 2 are incorporated by reference as if fully set forth herein.
4. Respondent UMS had offices located in six different cities in Southern Florida, including West Palm Beach, Belvedere, Boca Raton, Okeechobee, Green Acres and Lake Worth.
5. Respondent UMS represented itself as a timeshare resale company, and contacted potential consumers via telemarketing

6. At least three employees of Respondent UMS contacted at least three different West Virginia citizens via telephone on or around January 22, 2009, and communicated the following:
 - a. UMS had obtained a firm, binding offer from an individual for purchase and/or rental of both of the timeshare units owned by the West Virginia citizens.
 - b. To complete the sale and rental, a fee ranging between \$1,398.00 and \$1,794.24 would be needed to be paid upfront by each citizen, respectively.
 - c. The sale would take 45-60 days to complete, and rental would take 30 days to complete.
 - d. If no sale or rental is completed in 120 days, the citizens would be fully reimbursed for the upfront costs.
7. The West Virginia citizens were, at the time of the solicitation, the current owners of four separate timeshare units.
8. After the employees of Respondent UMS procured the upfront payments from the citizens, there was no further contact or communication between the parties until, typically, an employee of Respondent UMS contacted the citizens via phone weeks later. During those phone calls, the employee told the citizens that the rental or sale was complete and that the citizens should expect a money order within two weeks.
9. No payment, in any amount, was ever received by any West Virginia citizen, and no actual sales or resales of the timeshare units were executed or completed.
10. The contracts provided to the citizens did not include the resale services and provisions as enunciated by the UMS employees during the verbal sales pitch to the citizens. (Contract attached as Exhibit 1)
10. The West Virginia citizens were never advised, either through contract or verbal communication, of the right to cancel the contract or the statutorily acceptable time-frame in which to cancel the contract for sale or resale.
11. On June 30, 2011, Respondent Kirk pled guilty to a single count of conspiracy to commit mail and wire fraud in the United States District Court for the Southern District of Illinois.
12. As part of the guilty plea, Respondent Kirk admitted her role as Vice President of Respondent UMS, the deceptive and fraudulent practices utilized by herself and others employed by Respondent UMS (including the employees who contacted the West Virginia citizen), and the large monetary gain she accrued as a result of the fraudulent timeshare resale practices. (United States v. Kirk, Crim. No. 11-30093-GPM, U.S. Dist. Court for S.D. of Illinois, "Stipulation of Facts," attached hereto as Exhibit 2).

CONCLUSIONS OF LAW

13. Paragraphs 1 through 12 are incorporated by reference as if fully set forth herein.

14. Respondents have violated West Virginia Code § 36-9-5 by failing to furnish a complete copy of the contract, containing all the required information and statements, pertaining to the sale or resale of the time-share plan.

15. Respondents have violated West Virginia Code § 36-9-5 by failing to utilize a complete contract pertaining to the sale or resale of the time-share plan. The contract must have contained (a) the dates of execution of the contract, (b) the names and addresses of the seller, the developer and the time-sharing plan, (c) the total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject (such as reservation, maintenance, management and recreation fees)¹, (d) the estimated date of availability of each accommodation or facility which is not completed at the time the contract is executed by the seller and purchaser, (e) a description of the nature and duration of the time-share period being sold, including whether any interest in real property is being conveyed and the specific number of years or months constituting the terms of the contract, (f) a conspicuous, recognizable disclosure of the availability of cancellation, in large, bold-face type, (g) a statement that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract, (h) A statement that, in the event the purchaser cancels the contract during a ten-day cancellation period, the developer shall refund to the purchaser all payments made under the contract within twenty days after notice of cancellation is received.

16. Respondent has violated West Virginia Code § 36-9-5 by failing to furnish a complete copy of the contract for sale to the purchaser at least ten days before the date of closing.

17. Respondent has violated West Virginia Code § 36-9-9(b) by misrepresenting the purchaser's right to cancel.

18. Respondent has violated West Virginia Code § 36-9-10(b) by misrepresenting facts and/or creating a false or misleading impression regarding the time sharing plan during the verbal sales pitch.

ORDER

The Director, pursuant to the powers granted in the West Virginia Code § 36-9-1, *et. seq.*, **ORDERS** that:

1. Respondents summarily **CEASE AND DESIST** from soliciting and offering to sell or resell the aforesaid time-share plans or units, either directly or indirectly through officers, directors, employees, representative agent, affiliates, successors or assigns, unless and until compliance with the Act has been achieved and until further Order of the Director.

2. Respondent summarily **CEASE AND DESIST** from contacting West Virginia citizens for the purpose of offering services or advertising materials to sell or resell any time-share or time-share related interest.

¹ The costs which cannot be reasonable specified exactly shall be estimated and the purchaser shall be notified that those costs are subject to change. (W. Va. Code § 36-9-5(c) (2011)).

3. Pursuant to West Virginia Code § 36-9-23(a)-(e)(1-3), any exemptions from the requirements of the Act claimed by the Respondent are hereby summarily **REVOKED AND SUSPENDED** pending final determination of the proceedings herein, and until further Order of the Director.

4. Respondents **SHOW CAUSE** within fifteen (15) days after receipt of this Order, through responding to each and every paragraph set forth herein, why this Order should not be made final and permanent and why Respondents should not be ordered to offer rescission to the purchasers of its services.

5. **NOTICE** is hereby given that Respondent may be afforded a hearing in this matter if a written request is made by Respondent, and such request contains a written response to each and every paragraph contained herein. A request for hearing must be in writing and received by the Director within fifteen (15) days after receipt of this Order. If a timely request for a hearing is made, a hearing on this matter will be set for the purpose of determining whether this Order shall be modified, vacated, or made permanent.

6. If the Respondent does not timely show cause or timely request a hearing or fail to attend a duly scheduled hearing in this matter after receiving notice thereof, the allegations contained in this Order will be deemed true without further proof, Respondents shall be deemed in default, and this Order will become final and permanent without further notice to you and an administrated assessment will be imposed in accordance with West Virginia Code § 36-9-23(e)(2) and (3).

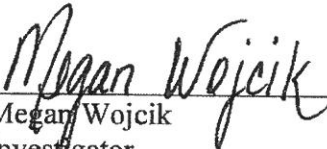
7. Any violation of this Order will constitute a violation of Chapter 36, Article 9, Section 23 of the Act, and if any violation comes to the attention of the Director, the matter will be pursued in the Circuit Court, and the Respondent may held liable for further civil or administrative penalties.

This Order does not prevent the West Virginia Land Sales and Condominium Division from seeking such other civil or criminal remedies that may be available to it under the Act.

ENTERED this 6th day of June 2012.

Glen B. Gainer III
Director of Land Sales and Condominiums

By:



Megan Wojcik
Investigator
West Virginia State Auditor's Office